

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA**

**IN RE
THE BABCOCK & WILCOX COMPANY

DEBTOR(S)**

**NUMBER
00-10992
SECTION "B"**

**CHAPTER 11
REORGANIZATION**

Jointly Administered with

**DIAMOND POWER INTERNATIONAL, INC.
BABCOCK & WILCOX CONSTRUCTION CO., INC.
AMERICON, INC.**

**00-10993
00-10994
00-10995**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In connection with the Debtors', the ACC's and the FCR's Joint Motion (P-6877) (the "Motion")¹ for Order Authorizing the Debtors, the ACC and the FCR to Enter Into Settlement with St. Paul,² the Court hereby makes the following finding of fact and conclusions of law:

1. This Court has jurisdiction to hear and determine the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This Motion presents a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A), (M) and (O).

2. The Notice of the Motion constitutes due, sufficient and timely notice to all persons entitled thereto in accordance with the requirements of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and of due process. No other or further Notice of the Motion or of this Order is necessary.

3. The Debtors, the ACC, the FCR and St. Paul negotiated at arm's-length and in good faith to reach agreement on the matters resolved through the Settlement Agreement.

¹ Capitalized terms not defined in these Findings of Fact and Conclusions of Law shall have the meanings given to them in the Motion, the Settlement Agreement, and the Joint Plan of Reorganization as of September 28, 2005, as amended through November 10, 2005, in that order.

² St. Paul means the St. Paul Mercury Insurance Company.

4. The compromise contained in the Settlement Agreement is a fair, reasonable and adequate settlement, is in the best interest of the Debtors' Estates, is a valid and proper exercise of the Debtors' business judgment, and represents an exchange for reasonably equivalent value.

5. B&W and MII, the parent of B&W: (1) are both parties to the Settlement Agreement; (2) have both had notice of the Motion; and (3) were both represented by counsel at the hearing on the Motion. Although MII is not a debtor in this bankruptcy proceeding, it has expressly assented to the relief granted herein.

6. All parties who claim an interest in coverage applicable to the Babcock Parties under the Subject Policies, or proceeds relating to such alleged coverage, have consented to the relief granted herein or assert claims that are the subject of bona fide disputes.

7. The FCR and the ACC, the court appointed representatives for the interests affected by the releases, have expressly consented to the relief granted herein and the entry into the Settlement Agreement by the Babcock Parties.

8. The Settlement Agreement, subject to certain terms and conditions, confers a substantial benefit upon the Debtors' Estates, by, among other things, providing for: (i) the settlement of complex potential litigation; and (ii) the payment of the Settlement Amount in addition to and not inclusive of any payments previously made by St. Paul to or on behalf of the Debtor.

9. Any and all payments by St. Paul under, arising out of, related to, or involving the Subject Policies, including the Settlement Amount, are deemed final and irrevocable payments.

10. St. Paul has made important contributions to this reorganization including, without limitation, its agreement to pay the Settlement Amount.

11. The benefits, promises and consideration that St. Paul is to provide under the Settlement Agreement are fair, equitable and adequate consideration for (i) the releases and injunctions provided under the Settlement Agreement, (ii) the other relief provided to St. Paul as a Settling Asbestos Insurance Entity under the Plan and under sections 105 and 524(g) of the Bankruptcy Code, and (iii) the inclusion of B&W/St. Paul Insurer Misconduct Actions within the scope of the Asbestos PI Channeling Injunction and the Asbestos Insurance Entity Injunction.

12. Because St. Paul allegedly provides insurance coverage to the Debtors for Asbestos PI Trust Claims, there is a sufficiently close connection between the claims and demands against St. Paul and the claims and demands against the Debtors to warrant inclusion as a Settling Asbestos Insurance Entity and the protections of the Asbestos PI Channeling Injunction pursuant to section 524(g)(4)(A)(ii)(III) of the Bankruptcy Code.

13. The Debtors: (i) have full power and authority to enter into and perform the Settlement Agreement and all other documents contemplated thereby; (ii) have the authority to take all corporate action necessary to authorize and approve the Settlement Agreement and the transactions contemplated thereby; and (iii) do not require any consents or approvals to consummate such transaction, other than those expressly provided for in the Settlement Agreement or provided herein.

14. Pursuant to the terms and conditions of the Settlement Agreement, St. Paul has specifically contracted to receive, and the Debtors, the ACC and the FCR have agreed to provide subject to approval of the Court, all of the benefits and protections of becoming a Settling Asbestos Insurance Entity as provided under the Plan, by being designated in the order confirming the Plan as a Settling Asbestos Insurance Entity.

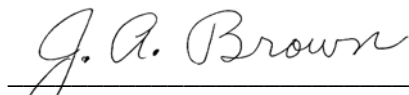
15. The terms of the compromise and exchanges of consideration set forth in the Settlement Agreement: (i) are in the best interests of the Debtors, their Estates and their creditors; and (ii) are entered into in good faith, at arm's-length, and for reasonably equivalent value.

16. For the avoidance of doubt, the Debtors, the ACC and the FCR do not have the authority to release, and do not purport to release, any Insurer Misconduct Action by any individual holder of an Asbestos PI Trust Claim or Insurer Misconduct Action. The ACC and the FCR do not have the authority to release, and do not purport to release, any Claim by any individual holder of an Asbestos PI Trust Claim or Insurer Misconduct Action.

17. Based on the findings set forth above, the Court hereby concludes as a matter of law that: (1) the legal requirements set forth in *In re Cajun Electric Power Cooperative, Inc.*, 119 F.3d 349, 355-56 (5th Cir. 1997), *In re AWECO, Inc.*, 725 F.2d 293 (5th Cir. 1984), *In re Jackson Brewing Co.*, 624 F.2d 599 (5th Cir. 1980), and in Bankruptcy Rule 9019 are fully satisfied; and (2) the Debtors, the ACC and the FCR are legally authorized to enter into and perform the Settlement Agreement and take any and all actions necessary to authorize and approve the Settlement Agreement and the transactions contemplated thereby.

18. To the extent that any of the above findings of fact are conclusions of law they shall be treated as such. To the extent that any of the above conclusions of law are findings of fact they shall be treated as such.

New Orleans, Louisiana, December 28, 2005.



Jerry A. Brown
U.S. Bankruptcy Judge